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C O N F I D E N T I A L BOGOTA 004645

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TAGS: [KJUS](#) [PGOV](#) [PREL](#) [PTER](#) [CO](#)
SUBJECT: CONSTITUTIONAL COURT UPHOLDS, TIGHTENS JUSTICE AND
PEACE LAW

REF: BOGOTA 3760

Classified By: Ambassador William B. Wood.
Reasons: 1.4 (b) and (d)

Summary

[11.](#) (C) The Constitutional Court rejected substantive challenges to the Justice and Peace Law and declared the Law to be constitutional in a May 18 press release, although it rejected some provisions of the Law. The Court's decision generally strengthened the Law's provisions and drew praise from Colombian and U.S.-based human rights groups, but criticism from the paramilitaries and "concern" from the government. While the Court has not yet issued its formal opinion, based on the press releases we share the assessment of the human rights groups that the Court has strengthened the Law. We remain convinced, however, that aggressive implementation is essential to success of the peace process. End summary.

Court Upholds Justice and Peace Law

[12.](#) (C) The Court announced in a press release late on May 18 (clarified in a press release on May 19) that it had voted 6-3 to reject a number of substantive challenges to the Justice and Peace Law (Law 975), and therefore it declared the law to be constitutional. The Court's standard practice of issuing press statements ahead of its full opinion (in some cases months before) backfired, however, when questions immediately arose regarding the scope of the Court's decision.

Immediate Criticisms

[13.](#) (C) Former paramilitary leader Ernesto Baez characterized the Court's May 18 release as the "death blow" to the peace process, although this was based on initial confusion that beneficiaries sentenced previously could not receive reduction of their previous sentences (they can). Minister of Justice and Interior Sabas Pretelt said on May 18 that he was very worried by the scope of the Court's decision. AUC leaders said on May 19 they would meet in Medellin to consider their response; they are still meeting.

Decision Strengthens Law in Key Respects

[14.](#) (C) The Court's May 18 and 19 press statements appear to have strengthened Law 975 in several respects. First, the Court expanded the time that the Fiscalía (Prosecutor General) has to investigate after the taking of a version libre statement and before it has to present the preliminary charges to the Law 975 judge. Prosecutors now have an indefinite investigation period after the version libre; they

do not have to notify the Law 975 judge "immediately" of intent to prosecute and they therefore do not face an immediate 60-day investigation period. In some cases of atrocious crimes, however, a confession during a version libre will in practice require the prosecutors to seek the judge's permission to detain the paramilitary immediately, curtailing the "indefinite" investigation period and starting the 60-day investigation clock.

15. (C) The Court struck down most of Article 25, thus eliminating the possibility that a demobilized person could seek Law 975 benefits for crimes he "unintentionally" omitted to mention in his version libre statement. The Court held that if a person left a crime out of his versio.pU,T;QW:{muSQORQIONAL COURT UPHOLDS, TIGHTENS JUSTICE AND PEACE LAW

16. (C) The Court revoked the 18-month credit towards the alternative sentence which Law 975 allowed in Article 31 for the time spent by the demobilized in a GOC-selected "concentration zone." The Court also expanded the rights of the victim to become involved in the Fiscalía's investigation by granting the victim the right to have access to the Fiscalía's formal case file during the Law 975 investigation phase. The Court said the victims have the same right to know about, and become involved in, Law 975 investigations as they do under ordinary criminal code procedures.

17. (C) The Court declared unconstitutional, because of procedural errors, Article 71 of the Law, which expanded the definition of "sedition" in the Colombian criminal code to include those who were part of guerrilla or "self defense" (i.e., paramilitary) groups whose actions interfered with legal and constitutional order. The Court also clarified the definition of assets which the demobilized must identify and which are subject to forfeiture. The Justice and Peace law had some ambiguity as to whether the assets had to have been "illegally" obtained and as to whether they had to be in the possession or control of the demobilized person. The Court clarified that it is the demobilized's responsibility to identify and forfeit all/all illicit assets (whether in their possession, or in the possession of others.)

Reactions Positive

18. (C) Reactions to the Court's May 18 statement, as clarified on May 19, were largely positive. Human rights groups, including Human Rights Watch (HRW) and the Colombian Commission of Jurists, issued statements praising the decision. HRW said the Court had "finally given the law some claws." Newspaper editorials (including Bogota's El Tiempo and Medellin's El Colombiano) were supportive (tempered by questions about the confusion surrounding the May 18 and 19 statements). Demobilized paramilitary leaders were quoted as saying they would continue with the peace process and not "return to the mountains."

Comment

19. (C) Our assessment is that the Court has continued to tighten Justice and Peace provisions but we will have to see what happens next. Aggressive implementation remains vital if this process is to be successful.
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